NOTES OF CASES.

Husband and Wife—Liability for Wife's Torts—Alienation of Affections.—In Claxom *v.* Pool, 197 S. W. 349, the Supreme Court of Missouri reverses the Springfield Court of Appeals (167 S. W. 623), and holds that a husband is not liable for the acts of his wife resulting in alienation of affections. Discussing the proposition as one at common law the court says:

"It is not enough that he should know of and acquiesce in the tort, or even approve of it; but he must have had some active participation in bringing it about, either by some act which he did himself, or something which his wife did under his direction. 38 Cyc. 486; Reed *v.* Peck, 163 Mo. 333, 63 S. W. 734; Leavell *v.* Leavell, 114 Mo. App. 24, 89 S. W. 55.

"If Pool is held, it must be upon the husband's common-law liability for his wife's tort. It is contended by the appellants that, even if the common-law rule is held to prevail in this state, it ought not to be applied in this case, because Pool himself was wronged by the same conduct of his wife which injured plaintiff; that is, if Mrs. Pool enticed Claxton away from his wife and engaged his affections herself, the injury was as much Pool's as it was Mrs. Claxton's, and for that reason he ought not to be held. This was the view taken by the Springfield Court of Appeals.

"The position is not supported by any authority, as stands conceded; nor is it supported by any reason offered anywhere for the existence of the rule which holds the husband liable for his wife's torts. The various reasons for the rule presented in the books all have their foundation in the submergence of the personality of the wife, on her marriage, and the ascendancy of the husband in the control of her person and affairs. It was said that in marriage the two became one person, and that person was the husband. At common law he controlled his wife's property, real and personal; he was entitled to her services and to the earnings of her labor. He was the ultimate authority in the management of their children. She could not sue, nor be sued, apart from him. He had control of her person and could coerce her actions. In return for the surrender of her individuality and initiative, he was charged with the duty of her protection and with responsibility for her conduct. Just as he was liable for wrongs committed by his servants while in discharge of their duties, so he was liable for wrongs committed by his wife at all times. If she maliciously set fire to a neighbor's house, he could not escape liability for the damage done by the mere fact that the conflagration necessarily involved his own house adjoining."

But whether liable or not common law, the court disposes of the case under the Married Woman's Acts, as:

"The only rational ground on which L. D. Pool could escape is on

the theory that, the reason for the maintenance of the common-law rule having ceased to exist, the application of the rule should cease. The Married Woman's Acts (section 8304-8309, R. S. 1909) emancipate a married woman by endowing her with ability to sue and be sued, to manage her own property, to have the earnings of her labor. Without a specific statutory enactment to that effect, she is recognized as being likewise emancipated, by the spirit and general trend of legislation, from her personal vassalage to her husband, which prevailed at common law. He has no authority to constrain her actions in the way which was once recognized as his right. In many states, with statutes similar to ours, the courts have boldly said that the rule need not be applied, because the reason for it has ceased to exist. Martin *v.* Robson, 65 Ill. 129, 16 Am. Rep. 578; Norris *v.* Corkill, 32 Kan. 410, 4 Pac. 862, 49 Am. Rep. 489; Story et ux. *v.* Downey et ux., 62 Vt. 243, 20 Atl. 321; Kuklence *v.* Vocht (Pa.), 13 Atl. 198; Burt *v.* McBain, 29 Mich. 260; Cooley on Torts (3d Ed.) 197, 198. The Illinois case is a leading one, and has been followed in many states. It presents reasons for the abrogation of the rule which cannot successfully be refuted.

"In this state the rule has been adhered to with reluctance and with criticism. In one of the latest cases in which it has been recognized (Miller *v.* Busey, 186 S. W. 983) this court mentions the rule as having possible application to the case on another trial but calls it illogical. In the case of Boutell *v.* Shallaberger, 264 Mo. 70, 174 S. W. 384, L. R. A. 1915D, 847, the tort sued for was an injury caused by the negligent management of the wife's property. It was held that the husband was not liable, because the statutes had given a married woman control of her separate property in specific terms, and the case was distinguished from those involving torts unconnected with the wife's property. In each of these two cases last cited the rule is mentioned as still adhered to though it was not necessary to apply it in the determination of either case. It is mentioned in the Boutell Case for the purpose of drawing a distinction in favor of the husband.

"In the principal case referred to as recognizing the rule (Nichols *v.* Nichols, 147 Mo. 387, 48 S. W. 947), the discussion arose on the motion for rehearing. The judgment in that case was against the husband and wife as joint tort-feasors under the instruction given the jury. In the opinion on the motion for rehearing, the discussion of the matter appears, for all the purposes of the case, to have been purely obiter. Other cases sometimes mentioned as sustaining the rule, as pointed out in the Boutell Case, are distinguishable in some way, or arose before the passage of the Married Woman's Acts. However, in the case of Taylor *v.* Pullen, 152 Mo. 434, 53 S. W. 1086, this court squarely held the husband liable for the slanders uttered by the wife out of his presence.

"As indicated above, none of the later cases discuss the broad proposition regarding the general purpose of recent legislation, nor do they consider the effect of recent customs and methods of dealing. The independence of married women, not only as to the conduct of their business, but as to their freedom of action and independence of husband's control, is left out of consideration. The Legislature of 1915 (Session Acts of 1915, page 269), possibly with a view of settling the doubts which seem to have harassed the judicial mind, enacted a statute which would relieve the husband from liability for injuries committed by a married woman, except in cases where he would be jointly responsible if the marriage did not exist. This, of course, simplifies the matter as to all cases arising in the future. The present case, however, arose before the enactment. We cannot presume from the enactment of the statute that the law was required to be changed, because statutes are often passed which simply declare a rule of law already existing. We are of the opinion that, according to the spirit, purpose, and general scope of recent legislation, in addition to specific statutory provisions, as well as the freedom of conduct accorded to married women of later years, all indicating a complete absence of the reason which supported the old rule relating to a husband's common-law liability for his wife's torts, the rule should no longer be recognized as in existence."

Electricity—Injury to Child by Defective Insulation—Trespasser—Contributory Negligence.—The liability of an electrical company for injuries to a child coming in contact with its wires is laid down in Williams *v.* Springfield, etc., Co. (Mo.), 202 S. W. 1, affirming the lower appellate court (187 S. W. 556). It was shown that the wires of the company passed through a tree near the dividing line of a public alley and a building lot; the tree was 30 or more feet high and its limbs quite low, such as children could, and did climb easily; the insulation of the wires in and near the tree had been in a bad condition for a year or more; about two months prior to the injury the owner of the lot began the erection of a bungalow, in and around which he permitted children to play without interference on his part; the erection of the bungalow was quite near the tree and its limbs extended over the roof; the bungalow being near completion on the day of the injury the children were playing on the roof and the owner told them to come down; the child injured undertook to do so by way of the tree; a limb broke just as he reached the trunk of the tree and four or five feet above the wires and he fell coming in contact with the wires and was severely injured. In applying the law the court said:

"The Court of Appeals gave recognition to the general principle that a company like appellant, if reasonably chargeable with knowl-